

STATE OF MICHIGAN
COURT OF APPEALS

In re ALDRICH/SEXTON, Minors.

UNPUBLISHED
November 24, 2015

No. 325909
Jackson Circuit Court
Family Division
LC No. 14-002614-NA

In re G SEXTON, Minor.

No. 325910
Jackson Circuit Court
Family Division
LC No. 14-002615-NA

AFTER REMAND

Before: SAWYER, P.J., and M. J. KELLY and SHAPIRO, JJ.

PER CURIAM.

In these consolidated appeals, respondent appeals by right the trial court's order terminating his parental rights to his minor children at the initial dispositional hearing pursuant to MCL 712A.19b(3)(b)(i) and (k)(ii).¹ In light of newly discovered evidence, we vacated the order of termination and remanded for further proceedings.² After conducting an evidentiary hearing, the trial court again found statutory grounds for termination and concluded that termination was in the children's best interests. We affirm.

Respondent first argues that the trial court's termination order must be reversed because he possesses a constitutional right to parent his children. It is well-established that parents possess a fundamental liberty interest in the care, custody, and management of their children. *In re Rood*, 483 Mich 73, 91; 763 NW2d 587 (2009). Nevertheless, "[a] parent's right to control

¹ Petitioner also requested termination under MCL 712A.19b(3)(j), but the trial court did not make any findings on this statutory ground.

² *In re Aldrich/Sexton minors*, unpublished order of the Court of Appeals, entered August 11, 2015 (Dockets Nos. 325909, 325910).

the custody and care of [his] children is not absolute, as the state has a legitimate interest in protecting the moral, emotional, mental, and physical welfare of the minor and in some circumstances neglectful parents may be separated from their children.” *In re Sanders*, 495 Mich 394, 409-410; 852 NW2d 524 (2014) (quotation marks and citation omitted). So long as the parent is afforded “fundamentally fair procedures,” his parental rights to his children may be constitutionally terminated. *Rood*, 483 Mich at 91.

These “fundamentally fair procedures” include, among other things, an adjudication trial, at which the petitioner has the burden to prove by a preponderance of the evidence that the parent is unfit, *Sanders*, 495 Mich at 405, 411-412, 422, and a termination hearing, at which the petitioner has the burden to prove by clear and convincing evidence that one or more statutory grounds for termination have been proved, *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). With respect to the latter proceeding, “[o]nce the petitioner has presented clear and convincing evidence that persuades the court that at least one ground for termination is established . . . the liberty interest of the parent no longer includes the right to custody and control of the children” and the parent’s rights “give[] way to the state’s interest in the child’s protection.” *In re Trejo*, 462 Mich 341, 355-356; 612 NW2d 407 (2000), citing *In re LaFlure*, 48 Mich App 377, 387; 210 NW2d 482 (1973).

Respondent does not dispute, and the record demonstrates, that he was provided adequate procedural safeguards. He was provided an adjudication trial and a termination hearing where he was given the opportunity to be heard and to contest the evidence. At the conclusion of these proceedings, the trial court determined that there was both a preponderance of the evidence to support assuming jurisdiction over the children and clear and convincing evidence to support termination of his parental rights under two separate statutory grounds. Respondent’s blanket assertion that the trial court’s orders must be reversed because he has an unfettered constitutional right to parent his children is without basis.

Respondent next argues that the trial court clearly erred in finding that statutory grounds for the termination of his parental rights were established by clear and convincing evidence. “In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met.” *VanDalen*, 293 Mich App at 139.³

The statutory grounds found in this case are set forth in MCL 712A.19b(3)(b)(i) and (k)(ii), which provide:

The court may terminate a parent’s parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

³ “This Court reviews for clear error the trial court’s ruling that a statutory ground for termination has been established and its ruling that termination is in the children’s best interests.” *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). “A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made.” *Id.*

* * *

(b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:

(i) The parent's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home.

* * *

(k) The parent abused the child or a sibling of the child and the abuse included 1 or more of the following:

* * *

(ii) Criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate.

These proceedings were initiated after respondent's oldest daughter disclosed that respondent had sexually abused her on several occasions while she was in respondent's custody. At the combined adjudication trial and termination hearing, the child testified that she had lived with respondent for approximately three years, between the ages of six and nine. She testified about five different incidents that occurred between her and respondent during that timeframe. In the first incident, she described being on respondent's bed, in a navy blue dress, with her "bottom" in the air when respondent pulled her underwear down, lifted her dress, and touched her "front private part." She further described that respondent's actions "kind of hurt and felt weird." Following this incident, she went to the bathroom, where she noticed that her "pee" was "bubbly," "foamy," and "white." In the second incident, the child again described being on respondent's bed, in a "purplish cheetah print skirt," when respondent moved her on top of him and touched her "front private part" with his "front private part." In the third incident, she described being in the living room, wearing only a t-shirt, when respondent placed her on his lap. She felt respondent's zipper touch her "bottom," so she "squeezed [her] butt cheeks together" to keep out "whatever was trying to get to [her] butt." She did so because respondent had previously penetrated her anus while in the living room, and she did not want it to happen again. In addition to the above incidents, the child also described an occasion when respondent made her watch a pornographic movie with him. She eventually disclosed the abuse to her six-year-old friend, who in turn alerted an adult.

Respondent denied the allegations and claimed that they were fabricated. Respondent blamed the fabrications on the child's mother, who he claimed coached the child into making the allegations in an effort to regain custody of the child and her brother. In support of that claim, respondent presented the testimony of two witnesses, each of whom claimed to have been part of a previous discussion with the children's mother during which she expressed a desire to obtain custody of her other two children (who are not part of this case) from their father and asked whether she would be able to do so if she said that the father molested the children. We remanded the case for the court to hear additional evidence as to this allegation that the mother tried to obtain false testimony.

On August 31, 2015, the trial court conducted an evidentiary hearing and heard testimony regarding the falsification allegation. At the conclusion of the hearing, the trial court placed her findings on the record and again ordered that respondent's parental rights be terminated. The court reiterated her conclusion that the testimony of the older child was both credible and compelling. She also made a finding that respondent was a "very uncredible witness." As to the new evidence, the court stated that it was not "specific enough [to] take that firm conviction out of my mind that [the child] was sexually abused." As a result, she again found clear and convincing evidence to support the statutory grounds and concluded that termination of respondent's rights was in the children's best interests.

We do not find clear error in the trial court's determination as to statutory grounds. In large measure, the matter turned on the credibility of the witnesses and "[i]t is not for this Court to displace the trial court's credibility determination." *In re HRC*, 286 Mich App 444, 460; 781 NW2d 105 (2009). The trial court had ample grounds for her conclusion that respondent sexually abused his daughter, a child under the age of 13, and that the sexual abuse included multiple acts of penetration or attempted penetration. Further, considering the nature of respondent's criminal sexual conduct with the child, the trial court did not clearly err in finding that each of the minor children would likely suffer injury or abuse in the foreseeable future if returned to respondent's care. See *In re Jenks*, 281 Mich App 514, 517-518; 760 NW2d 297 (2008). Thus, the trial court did not clearly err in finding that statutory grounds for termination had been established by clear and convincing evidence.

We also find no error in the trial court's conclusion that termination of respondent's parental rights was in the children's best interests. The Child Protective Services (CPS) worker testified that, in his opinion, termination was in each child's best interests because it was the only way they would be adequately protected. The worker maintained this opinion even though the children were placed with their respective mothers. The children's guardian ad litem concurred that termination was in the children's best interests. Given the inevitable effect the allegations would have upon the children and given the court's conclusion that the petitioner repeatedly sexually abused his daughter, we see no basis to find error in the trial court's best interests determination as to all of the children.

Affirmed.

/s/ David H. Sawyer
/s/ Michael J. Kelly
/s/ Douglas B. Shapiro